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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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OPTIS WIRELESS TECHNOLOGY,) (CIVIL ACTION NO.
LLC, OPTIS CELLULAR) (2:19-CV-66-JRG
TECHNOLOGY, LLC, PANOPTIS) (
PATENT MANAGEMENT, LLC,) (
UNWIRED PLANET, LLC, UNWIRED) (
PLANET INTERNATIONAL LIMITED,) (
PLAINTIFFS,) (
VS.) (
MARSHALL, TEXAS
AUGUST 7, 2020
APPLE INC.,) (1:11 P.M.
DEFENDANTS.) (

TRANSCRIPT OF JURY TRIAL

AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Defendants, who is your next witness?

MR. MUELLER: Your Honor, our next witness is going to be Ray Perryman. May I raise one issue before we call him, Your Honor?

THE COURT: You may.

MR. MUELLER: So as I understand from Plaintiffs, with respect to their rebuttal case, which will be coming soon, they intend to play -- or are considering playing, I should say, at the conclusion of it a portion of the deposition of a Sophie Vrzic. I'm probably mispronouncing her name, but I think it's V-r-i-c-i-c. As context, this is a --

THE COURT: Let me stop you. Is this something we can take up after you've close your case-in-chief?

MR. MUELLER: Yes, Your Honor.

THE COURT: Then let's do that.

MR. MUELLER: Okay.

THE COURT: I don't want to delay the jury getting back in here.

MR. MUELLER: Understood.

THE COURT: All right. Let's bring the jury in.

01:19:48 1 COURT SECURITY OFFICER: All rise.

01:20:14 2 (Jury in.)

01:20:15 3 THE COURT: Welcome back, ladies and gentlemen.

01:20:17 4 Please have a seat.

01:20:19 5 Defendant, call your next witness.

01:20:22 6 MR. MUELLER: Thank you, Your Honor. We call

01:20:23 7 Dr. Ray Perryman. And Ms. Smith will conduct the

01:20:26 8 examination.

01:20:26 9 THE COURT: All right. Dr. Perryman, if you'll

01:20:40 10 come forward and be sworn, please.

01:20:43 11 (Witness sworn.)

01:20:44 12 THE COURT: Please come around and have a seat at

01:20:47 13 the witness stand.

01:20:49 14 THE WITNESS: Thank you, Your Honor.

01:20:54 15 THE COURT: Ms. Smith, you may proceed whenever

01:21:00 16 you're ready.

01:21:01 17 MS. SMITH: Thank you, Your Honor.

01:21:01 18 RAY PERRYMAN, DEFENDANT'S WITNESS, SWORN

01:21:01 19 DIRECT EXAMINATION

01:21:02 20 BY MS. SMITH:

01:21:02 21 Q. Good afternoon, Dr. Perryman. If you would, introduce
01:21:05 22 yourself to the jury.

01:21:06 23 A. Yes, ma'am. My name is Raymond Perryman. I grew up
01:21:10 24 over in Lindale, and I live now in Odessa and work in Waco.

01:21:16 25 And that's because 28 years ago, I married the mayor of

01:21:19 1 Odessa, and so I moved. And I continue my business in
01:21:24 2 Waco. And I'm the father of five and the grandfather of
01:21:29 3 four with one on the way.

01:21:30 4 Q. Dr. Perryman, if you would, share your educational
01:21:34 5 background with the jurors.

01:21:37 6 A. Yes, ma'am. After graduating from Lindale, I attended
01:21:40 7 Baylor University, and I received a Bachelor's degree in
01:21:43 8 mathematics at Baylor. And then I attended Rice University
01:21:47 9 down in Houston, and received a Ph.D. in economics.

01:21:50 10 Q. And where do you work now, doctor?

01:21:53 11 A. Now I am the president of a company called The Perryman
01:22:00 12 Group. It's -- it's an economic consulting company that I
01:22:03 13 manage.

01:22:03 14 Q. And when you say economic consulting company, how long
01:22:06 15 you have been doing that?

01:22:07 16 A. Well, the company itself was incorporated about 35
01:22:10 17 years ago. I've been doing economic consulting for
01:22:14 18 something over 40 years.

01:22:15 19 Q. I understand you also have some teaching experience?

01:22:19 20 A. Yes, ma'am, I do. I spent 17 years at Baylor
01:22:23 21 University and five years at Southern Methodist University.
01:22:25 22 I still have some honorary titles and do a little work at
01:22:30 23 two or three universities.

01:22:31 24 During my time at Baylor, I was -- spent 10 years
01:22:35 25 as the Herman Brown Professor of Economics, which was an

01:22:39 1 endowed research position. And the last five years I was
01:22:40 2 there, my title was University Professor, which is a title
01:22:43 3 that, to my understanding, only two people at Baylor have
01:22:46 4 had in the past -- since 1845. As long as Baylor's been
01:22:52 5 there.

01:22:52 6 THE COURT: Dr. Perryman, it's good to have you
01:22:54 7 appear in court in front of me again. I remember the last
01:22:58 8 time you appeared, you spoke very fast, and you're right
01:23:03 9 back where you were at the last trial. Please slow down,
01:23:07 10 sir.

01:23:07 11 THE WITNESS: Yes, Your Honor.

01:23:08 12 THE COURT: Thank you very much.

01:23:08 13 Ms. Smith, please continue.

01:23:10 14 MS. SMITH: Thank you, Your Honor.

01:23:11 15 Q. (By Ms. Smith) Dr. Perryman, have you received any
01:23:13 16 awards for your work in economic and financial consulting?
01:23:17 17 A. I have. I -- I've been very fortunate in that regard.
01:23:20 18 I received a number over the years. Just -- just a few
01:23:20 19 that are memorable to me.

01:23:23 20 Lindale started an award for their distinguished
01:23:26 21 alumnus a few years ago, and they were kind enough to give
01:23:30 22 me that the first year. And then I received awards, alumni
01:23:36 23 awards, from both Baylor University and Rice University for
01:23:39 24 work I had done.

01:23:40 25 I received a number of academic research awards,

01:23:40 1 and one that meant a lot to me, back in 2012, the Texas
01:23:45 2 Legislative Conference named me the Texan of the Year,
01:23:47 3 which was -- which I've done a lot of work on economic
01:23:50 4 growth and development here in Texas. So that one meant a
01:23:53 5 lot to me.

01:23:54 6 I've won one that the Cesar Chavez Foundation gave
01:23:54 7 me for humanitarian work, which is something I've done a
01:24:00 8 lot of work on, issues like hunger and poverty and child
01:24:03 9 abuse and that sort of thing.

01:24:05 10 And then just this past year -- less than a year
01:24:07 11 ago, I was given the lifetime achievement award by the
01:24:14 12 International Economic Development Council, again, largely
01:24:14 13 for developing economies primarily here in Texas.

01:24:19 14 Q. I understand, Doctor, even though you're a Texan, that
01:24:22 15 the -- The New York Times has -- has given you an award as
01:24:26 16 well. Is that correct?

01:24:26 17 A. Well, they haven't given me an award, but they did once
01:24:27 18 call me the state's unofficial economist.

01:24:31 19 Q. A title, yes, Doctor.

01:24:32 20 Now, what kind of experience do you have in
01:24:34 21 assessing patent licenses?

01:24:36 22 A. Quite a bit. I've been doing this for over 30 years.
01:24:40 23 I have studied thousands and thousands of patents over that
01:24:43 24 period of time, and done the economic analysis associated
01:24:45 25 with those patents.

01:24:47 1 Q. And what experience do you have related to patent
01:24:51 2 license negotiations?

01:24:53 3 A. Well, I never invented anything. I've never been in
01:24:57 4 the room actually negotiating a patent license. I have
01:25:00 5 helped a lot of companies that have patents to -- with
01:25:04 6 their negotiations by valuing their patents or helping them
01:25:07 7 structure their negotiations or things of that nature.

01:25:11 8 Q. If somebody came into the courtroom and said that Apple
01:25:14 9 didn't have an expert with any experience in surveys, would
01:25:18 10 that be right or wrong?

01:25:19 11 A. I believe that would be incorrect.

01:25:21 12 Q. Well, tell -- tell the jurors a little bit about your
01:25:24 13 experience in surveys.

01:25:25 14 A. Sure. I've conducted hundreds of surveys, many of them
01:25:29 15 dealing with -- with consumer products and issues. For
01:25:32 16 years, I was the co-owner of a company called Metro Stats
01:25:36 17 that did consumer surveys in many large cities around the
01:25:43 18 country. I have done all of the underlying statistical
01:25:46 19 work that goes into surveys. I've published extensively on
01:25:50 20 that and received a number of awards for that work.

01:25:53 21 I have -- as I think Dr. Reed-Arthurs said
01:25:57 22 yesterday, things like the unemployment rate and consumer
01:26:01 23 price index are all based on big surveys. I've helped the
01:26:05 24 U.S. Department of Labor and U.S. Department of Commerce in
01:26:08 25 designing and advising on those surveys for about 30 years.

01:26:10 1 And then I actually created the Texas Consumer
01:26:14 2 Price Index, which is also based on a large survey.

01:26:16 3 Q. Dr. Perryman, how many times have you served as an
01:26:21 4 expert on patent damages?

01:26:22 5 A. Probably around 70 times, something like that, in
01:26:28 6 litigation.

01:26:28 7 Q. And have any of those cases involved patents claimed or
01:26:33 8 declared to be essential?

01:26:34 9 A. Yes, ma'am. I would say about 25 or so of those.

01:26:37 10 Q. Dr. Perryman, are you being compensated for -- for your
01:26:44 11 work in this case today?

01:26:45 12 A. My company is, yes, ma'am.

01:26:46 13 Q. Okay. And is that compensation dependent in any way
01:26:50 14 dependent on the outcome of this case?

01:26:51 15 A. No, ma'am, it's not.

01:26:53 16 Q. In addition to -- to Apple -- or -- or maybe I'll say
01:26:56 17 setting Apple aside, how many clients have you done work
01:26:59 18 for, say, in the past five years?

01:27:01 19 A. Probably 3- or 400, something like that.

01:27:04 20 Q. And out of that 3- or 400, how many times did you work
01:27:07 21 for Apple?

01:27:08 22 A. Three times.

01:27:09 23 MS. SMITH: Your Honor, I'd offer Dr. Perryman as
01:27:13 24 an expert in financial, economic damages analysis,
01:27:17 25 technology, and patent valuation.

01:27:19 1 THE COURT: Is there objection?

01:27:20 2 MR. SHEASBY: No objection, Your Honor.

01:27:22 3 THE COURT: Then the Court will recognize this
01:27:24 4 witness as an expert in those designated fields.

01:27:26 5 Please continue, Ms. Smith.

01:27:29 6 MS. SMITH: Thank you, Your Honor.

01:27:30 7 Q. (By Ms. Smith) Dr. Perryman, have you been here each
01:27:31 8 day of trial?

01:27:32 9 A. I have, yes, ma'am.

01:27:32 10 Q. Have you seen all the witnesses?

01:27:34 11 A. I have, yes, ma'am.

01:27:35 12 Q. And you saw that Apple actually used its time in trial
01:27:40 13 to call engineers to show it doesn't infringe. Did you see
01:27:42 14 that?

01:27:43 15 A. Yes, I did.

01:27:43 16 Q. How many witnesses is Apple calling on damages?

01:27:46 17 A. Just me.

01:27:47 18 Q. What do you understand about Apple's position on
01:27:52 19 whether or not it infringes?

01:27:53 20 A. Well, as -- as we've all heard throughout the week,
01:27:57 21 Apple feels very strongly that it does not infringe these
01:28:00 22 patents.

01:28:01 23 Q. And what is -- what is Plaintiffs' damage claim in this
01:28:05 24 case?

01:28:05 25 A. Over half a billion dollars, a little over \$500

01:28:10 1 million.

01:28:10 2 Q. So if Apple's engineers, all the witnesses, the -- the
01:28:15 3 engineer witnesses that Apple's brought in, if they're
01:28:18 4 right, why are you here?

01:28:20 5 MR. SHEASBY: Your Honor, I object to the
01:28:21 6 misstatement of the record. Apple's engineers didn't give
01:28:24 7 non-infringement opinions.

01:28:25 8 THE COURT: Overruled, Mr. Sheasby.

01:28:29 9 A. Well, I'm here because, obviously, you folks get to
01:28:33 10 make the decision about whether or not there was
01:28:34 11 infringement here, and if there -- if -- if you determine
01:28:38 12 that there were, you -- you would need to get a perspective
01:28:41 13 on what the -- the proper amount of compensation would be.

01:28:45 14 Q. (By Ms. Smith) And Dr. Perryman, what assumptions did
01:28:47 15 you make on the issues of infringement and validity in
01:28:52 16 preparing your analysis?

01:28:53 17 A. Well, as Mr. Kennedy said yesterday, all damage experts
01:28:57 18 are required by law to assume, when we do our analysis,
01:29:00 19 that the patents are valid and infringed, even though
01:29:05 20 there's a lot of controversy about that, obviously, here
01:29:07 21 this week.

01:29:08 22 Q. But if the patents are invalid or are not infringed,
01:29:12 23 what would the damages be?

01:29:14 24 A. Well, it would be zero in that case.

01:29:16 25 Q. Thank you, Doctor.

01:29:20 1 Now, you were here when Mr. Kennedy testified,
01:29:23 2 correct?

01:29:23 3 A. I was, yes, ma'am.

01:29:24 4 Q. Do you agree with Mr. Kennedy's conclusions?

01:29:27 5 A. Not at all, no, ma'am.

01:29:30 6 MS. SMITH: If we could start with DDX-11.43,
01:29:35 7 Mr. Lee. Thank you.

01:29:36 8 Q. (By Ms. Smith) Let's start with a infrastructure cost
01:29:42 9 approach. What's that approach?

01:29:43 10 A. Well, that's one way that -- that Mr. Kennedy went
01:29:46 11 about reporting to measure damages. And, basically, what
01:29:51 12 he was saying was what it would cost -- or what you would
01:29:55 13 have to pay the -- the carriers in order to make up for the
01:29:59 14 loss in performance on their networks allegedly because of
01:30:03 15 these -- not using these patents.

01:30:05 16 Q. And -- and what's wrong with that infrastructure cost
01:30:08 17 approach?

01:30:08 18 A. Well, a number of things. First of all, I have -- I've
01:30:13 19 been around a long time, and I did some pretty serious
01:30:16 20 looking, and I've never seen any situation where that ever
01:30:19 21 occurred in the real world. And I don't think --
01:30:23 22 Mr. Kennedy, I think he testified yesterday he had never
01:30:25 23 seen that, either.

01:30:26 24 The carriers want Apple on their network. Apple
01:30:36 25 is the largest cell phone company in the United States.

01:30:39 1 They don't want a network out there where if you've got
01:30:41 2 AT&T or Verizon, that they say, well, you can't be on it if
01:30:44 3 you have Apple. So, there's no real way that Apple should
01:30:48 4 pay them that or that they would ever ask Apple to them pay
01:30:52 5 that. That -- that just wouldn't happen.

01:30:55 6 And then one other thing that bothered me a little
01:30:56 7 bit, in the course of all these 40 years, I've done a lot
01:30:59 8 of analysis of infrastructure projects, including cell
01:31:03 9 towers and telecommunications infrastructure, but also
01:31:08 10 highways and ports and airports and all sorts of things.

01:31:11 11 And the way Mr. Kennedy did his analysis was, it
01:31:14 12 was like if you spent X percent more on infrastructure, you
01:31:16 13 would get X percent more speed. And that's just not how
01:31:21 14 infrastructure works.

01:31:21 15 If you spend 10 percent more on a highway, that
01:31:26 16 doesn't mean you can drive 10 percent faster. There's all
01:31:29 17 kinds of things that go into that, and there was no
01:31:32 18 analysis at all of how the expenditures would translate.

01:31:36 19 And then another part of that is the -- these
01:31:38 20 companies are constantly, all the time, spending money
01:31:41 21 to -- to make their -- to make their systems better in any
01:31:46 22 case. So I don't know how you would ever sort anything
01:31:49 23 like that out, even if it did somehow make sense.

01:31:52 24 Q. How long -- how long -- remind me, how long have you
01:31:56 25 been -- have you been involved in valuing patents?

01:31:59 1 A. Over 30 years.

01:32:00 2 Q. And you actually said that you'd never heard of the
01:32:03 3 infrastructure cost approach?

01:32:04 4 A. No, ma'am, not at all.

01:32:07 5 Q. Okay.

01:32:07 6 MS. SMITH: If we could see Mr. Kennedy's trial
01:32:10 7 trans -- trial testimony on Day 3. It's, I believe,
01:32:17 8 Page 46, Lines 12 through 16.

01:32:19 9 Q. (By Ms. Smith) Does that look familiar, Dr. Perryman?

01:32:21 10 A. Yes, it does.

01:32:22 11 Q. What did Mr. Kennedy have to say about this new
01:32:26 12 approach?

01:32:26 13 A. Well, when he was asked if he had seen anyone do this,
01:32:32 14 he also said not a specific payment. So, obviously, he
01:32:36 15 hadn't seen this occur, either.

01:32:38 16 Q. Now, moving away from the cost infrastructure approach,
01:32:41 17 he took a second approach, did he not?

01:32:43 18 A. He did, yes, ma'am.

01:32:45 19 Q. And what is that?

01:32:46 20 A. It was a survey approach where he took the survey that
01:32:49 21 Dr. Reed-Arthurs did and tried to turn that into a method
01:32:53 22 of calculating losses.

01:32:55 23 Q. And that's, as the jurors will remember, the survey
01:32:59 24 where she made up the hypothetical phones?

01:33:02 25 A. That's correct.

01:33:02 1 Q. All right. What's wrong with the survey approach?

01:33:04 2 A. Well, there's -- there's several things. I could go
01:33:06 3 into a lot of the -- the technical aspects of it. But to
01:33:10 4 kind of just summarize it, if you want to reflect what a
01:33:13 5 consumer is going to do in a survey, you have to try to
01:33:16 6 replicate the consumer experience as much as you can, make
01:33:20 7 it seem like they're actually doing what they're doing.

01:33:23 8 As you mentioned, there were some problems in some
01:33:25 9 of the phones that were created, but you recall,
01:33:30 10 Mr. Blevins, when he was testifying, he told us that when
01:33:31 11 Apple brings out a new phone, they like to have a lot of
01:33:34 12 new features in it, kind of wow factors, new things, that
01:33:37 13 sort of thing.

01:33:38 14 That technique, as she admitted yesterday, can
01:33:40 15 only handle about seven or eight things, and then it starts
01:33:43 16 to break down. So you can't possibly put all of those
01:33:45 17 features in there, and, in fact, she didn't.

01:33:48 18 But I think a bigger problem is that I can't ask
01:33:52 19 you how much you'd pay for something if you don't know what
01:33:56 20 it is.

01:33:56 21 Q. Well, and, Dr. Perryman, I may stop you there and have
01:34:00 22 you take a look at DDX-11.47.

01:34:03 23 A. Yes, ma'am.

01:34:04 24 Q. What are -- are these some notes? Do you recognize
01:34:07 25 these as notes from -- from the survey?

01:34:10 1 A. I do, yes, ma'am.

01:34:10 2 Q. And what are we seeing here?

01:34:13 3 A. Well, when she was taking notes about the survey --
01:34:16 4 which she talked about some of them yesterday -- one thing
01:34:19 5 she said was most of the ones from her focus group didn't
01:34:20 6 know exactly what speed their phones operated but
01:34:23 7 understood that speeds varied based on location and network
01:34:27 8 availability and knew what it was good enough.

01:34:29 9 Q. So they didn't know what speed their phone operated
01:34:32 10 out, but they were basically being given a test over it?

01:34:35 11 A. Right, yeah. They were basically being asked: How
01:34:37 12 much would you pay for more speed?

01:34:39 13 If I could take just one second and give a pretty
01:34:41 14 simple example about this.

01:34:42 15 Q. Please.

01:34:43 16 A. Since I've been here in Marshall, Baylor University
01:34:46 17 asked me to do a little program for some alumni over the --
01:34:46 18 over a -- electronically. And it turned out because of
01:34:52 19 where I was, I had to do it over the cellular network. And
01:34:54 20 they were -- they wanted to make sure I had enough
01:34:57 21 bandwidth to do it. So they tested my device here on the
01:35:00 22 network here in Marshall. It turned out I had three times
01:35:03 23 as much as I needed.

01:35:05 24 And so I did the -- the -- the speech. Everything
01:35:08 25 went fine. But had I taken a 50 percent cut -- in other

01:35:11 1 words, instead of having three times as much, I only had
01:35:14 2 one and a half times as much -- I would have never known
01:35:16 3 the difference. And the only reason I know the difference
01:35:19 4 is because they tested it. I mean, I didn't know what the
01:35:21 5 speed was, and I think that's the --

01:35:21 6 MR. SHEASBY: Your Honor --

01:35:23 7 A. -- situation we --

01:35:26 8 MR. SHEASBY: -- I object.

01:35:24 9 A. -- find ourselves in.

01:35:25 10 MR. SHEASBY: This is technical commentary. He's
01:35:30 11 not a technical witness. He shouldn't be able to be giving
01:35:32 12 this type of testimony.

01:35:32 13 MS. SMITH: Your Honor, I think he was -- he was
01:35:34 14 merely giving factual testimony about his experience.

01:35:37 15 MR. SHEASBY: And that's --

01:35:38 16 THE COURT: I understand, but this doesn't relate
01:35:42 17 directly to his opinions. I'm not going to strike what
01:35:44 18 he's testified to, but I will direct you to move on,
01:35:47 19 Ms. Smith.

01:35:47 20 MS. SMITH: Of course, Your Honor. Thank you.

01:35:50 21 Q. (By Ms. Smith) Dr. Perryman, is there anything wrong
01:35:52 22 with -- with how Mr. Kennedy used the survey results?

01:35:55 23 A. Yes, ma'am. To start with, if you can't determine what
01:36:02 24 people -- how much more people would pay for it, then you
01:36:05 25 certainly can't use it to -- to multiply it by something

01:36:08 1 else to get to a damage number because -- if you don't have
01:36:13 2 reliable information to start with.

01:36:15 3 So that's -- that's just the biggest kind of
01:36:17 4 structural problem with it. He was multiplying two things
01:36:20 5 together, and one of them he didn't really know the answer
01:36:22 6 to. So -- so you can't -- you can't do that.

01:36:24 7 And -- and so that was -- that's -- that's the --
01:36:27 8 the biggest problem that I saw with it.

01:36:30 9 In addition to that, I'm aware that -- that Apple
01:36:35 10 does not use any techniques like this in pricing its
01:36:40 11 products. In fact, as -- as Dr. Reed-Arthurs gave us a
01:36:44 12 slide and showed us, when Apple brings out a new phone,
01:36:44 13 they price it at the same level where they were pricing the
01:36:50 14 previous phone, whether it has a different type of cellular
01:36:53 15 functionality or not.

01:36:54 16 That's just -- that's just not how Apple goes
01:36:57 17 about doing this. So I -- there were -- there were a lot
01:37:00 18 of problems with -- with the way that -- that Mr. Kennedy
01:37:02 19 did that.

01:37:03 20 Q. Doctor, you've been in the courtroom, and there's been
01:37:06 21 a lot of talk about Qualcomm. Do you recall that?

01:37:09 22 A. Yes, ma'am.

01:37:10 23 Q. All right.

01:37:11 24 MS. SMITH: Your Honor, may I approach the flip
01:37:12 25 board, please?

01:37:13 1 THE COURT: You may.

01:37:14 2 MS. SMITH: Thank you, Your Honor.

01:37:29 3 I need to seal the courtroom, please.

01:37:30 4 THE COURT: All right. Based on counsel's
01:37:33 5 request, I'll order the courtroom sealed at this time.

01:37:35 6 Those of you not present not subject to the protective
01:37:39 7 order in this case or aligned with Defendant, Apple, should
01:37:41 8 excuse yourselves until the courtroom is unsealed and the
01:37:47 9 public is invited to return.

01:37:49 10 MR. SHEASBY: PanOptis is in compliance, Your
01:37:52 11 Honor.

01:37:52 12 THE COURT: Thank you.

01:37:53 13 (Courtroom sealed.)

01:37:53 14 (This portion of the transcript is sealed
01:37:53 15 and filed under separate cover as
01:37:54 16 Sealed Portion No. 17.)

01:37:54 17 (Courtroom unsealed.)

02:39:49 18 THE COURT: What's the anticipated length of this
02:39:52 19 witness, Mr. Mueller?

02:39:53 20 MR. MUELLER: Just over three minutes.

02:39:55 21 THE COURT: All right. Proceed.

02:39:57 22 (Videoclip played.)

02:39:57 23 QUESTION: Would you state and spell your name for
02:40:01 24 the record, please.

02:40:02 25 ANSWER: Richard Misiag. R-i-c-h-a-r-d.

02:40:06 1 QUESTION: Mr. Misiag, where did you work
02:40:10 2 immediately before IPValue?

02:40:11 3 ANSWER: At PanOptis.

02:40:12 4 QUESTION: Did you hold a position of head of
02:40:14 5 licensing for your entire tenure at PanOptis?

02:40:16 6 ANSWER: I believe that answer is yes.

02:40:21 7 QUESTION: Mr. Misiag, we have marked as Exhibit 4
02:40:24 8 a copy of U.S. Patent No. 8,019,332. Do you see that?

02:40:28 9 ANSWER: Yes.

02:40:28 10 QUESTION: Mr. Misiag, we have marked as Exhibit 5
02:40:39 11 a copy of U.S. patent number 8,102,833. Do you see that?

02:40:43 12 ANSWER: Yes.

02:40:43 13 QUESTION: Have you ever seen this patent before?

02:40:45 14 ANSWER: Again, it's possible I've seen it. I
02:40:49 15 just don't recollect seeing it.

02:40:52 16 QUESTION: You have no recollection of having read
02:40:54 17 this patent, correct?

02:40:55 18 ANSWER: I don't have any recollection of reading
02:40:58 19 this patent.

02:40:59 20 QUESTION: And you have no information or
02:41:01 21 knowledge about this patent, correct?

02:41:02 22 ANSWER: Not that I recall.

02:41:06 23 QUESTION: Mr. Misiag, we have marked as Exhibit 6
02:41:11 24 a copy of U.S. Patent No. 8,385,284. Do you see that?

02:41:14 25 ANSWER: Yes.

02:41:14 1 QUESTION: Have you ever seen this patent before?

02:41:21 2 ANSWER: I mean, the -- the diagram looks
02:41:27 3 familiar, but it looks familiar to a thousand other
02:41:29 4 patents, so I don't recollect this specific patent.

02:41:32 5 QUESTION: You have no rec -- recollection of
02:41:34 6 having read this patent, correct?

02:41:35 7 ANSWER: I -- I don't recall.

02:41:37 8 QUESTION: And you have no information or
02:41:42 9 knowledge about this patent, correct?

02:41:42 10 ANSWER: I have no information about this patent
02:41:46 11 that I recall.

02:41:46 12 QUESTION: And you don't recall having seen this
02:41:50 13 or any of the prior patents that I've shown you, correct?

02:41:54 14 ANSWER: Yeah, across the boards. I -- I may have
02:41:56 15 seen the patents. I just don't recall, and I have no
02:41:59 16 recollection of the -- the content or technology in the
02:42:03 17 patents.

02:42:03 18 QUESTION: Mr. Misiag, we've marked as Exhibit 8 a
02:42:06 19 copy of U.S. Patent No. 9,001,774. Do you see that?

02:42:11 20 ANSWER: Yes.

02:42:11 21 QUESTION: Do you have any recollection of having
02:42:15 22 seen this patent before?

02:42:17 23 ANSWER: Again, I may have seen it. I just don't
02:42:21 24 have any recollection of it specifically.

02:42:22 25 QUESTION: Do you have any recollection of

02:42:25 1 having -- having read this patent before?

02:42:27 2 ANSWER: I -- I don't have any recollection of
02:42:30 3 reading this patent.

02:42:31 4 QUESTION: Do you have any information or
02:42:33 5 knowledge about this patent?

02:42:34 6 ANSWER: I don't have any information or knowledge
02:42:41 7 of this patent other than, again, that it is a patent.

02:42:45 8 QUESTION: Okay. So to sum up, you have no
02:42:48 9 information or knowledge about any of the patents that
02:42:50 10 we've marked as Exhibits 3 through 8, correct?

02:42:54 11 ANSWER: Yeah. I -- I -- I just don't recollect
02:42:58 12 any knowledge across the boards on these specific patents.

02:43:01 13 QUESTION: And you're not aware of any advantages,
02:43:07 14 improvements, or benefits of any of the patents we've
02:43:12 15 marked as Exhibits 3 through 8, correct?

02:43:15 16 ANSWER: I'm not familiar with the patents, nor do
02:43:19 17 I recollect any specific information with -- with respect
02:43:23 18 to the improvements on these patents.

02:43:26 19 (Videoclip ends.)

02:43:29 20 THE COURT: Does that complete this witness by
02:43:31 21 deposition?

02:43:32 22 MR. MUELLER: Yes, Your Honor. And Apple rests.

02:43:34 23 THE COURT: All right. I assume all of that
02:43:36 24 deposition time is chargeable to the Plaintiffs since I
02:43:38 25 didn't hear the voice change at all?

02:43:41 1 MR. MUELLER: That's correct, Your Honor.

02:43:42 2 THE COURT: Okay.

02:43:43 3 MR. SHEASBY: Chargeable to the Defendants, Your
02:43:45 4 Honor.

02:43:45 5 THE COURT: I'm sorry. I meant the Defendants. I
02:43:47 6 was looking at Mr. Mueller. I misspoke.

02:43:49 7 All right. Ladies and gentlemen of the jury,
02:43:51 8 we're going to take a short recess at this time. I'm going
02:43:54 9 to ask you to close your notebooks and leave them in your
02:43:57 10 chairs. I'm going to ask you to follow all my
02:43:59 11 instructions, and we'll be back relatively soon to
02:44:02 12 continue.

02:44:02 13 The jury is excused for recess.

02:44:05 14 COURT SECURITY OFFICER: All rise.

02:44:05 15 (Jury out.)

02:44:07 16 THE COURT: Be seated, please.

02:44:29 17 Mr. Sheasby, you asked me in chambers this morning
02:44:39 18 to let you know when you had an hour and 20 minutes
02:44:42 19 remaining. You have one hour and 22 minutes remaining. So
02:44:47 20 consider yourself notified.

02:44:48 21 MR. SHEASBY: Thank you, Your Honor.

02:44:49 22 THE COURT: All right. Mr. Mueller, you have nine
02:44:52 23 minutes remaining.

02:44:52 24 MR. MUELLER: Thank you, Your Honor.

02:44:53 25 THE COURT: I assume Plaintiff, after the recess,

02:44:55 1 will call its first rebuttal witness; is that correct?

02:44:57 2 MR. SHEASBY: That's correct, Your Honor.

02:44:58 3 THE COURT: And what -- what should I anticipate
02:45:00 4 as far as Plaintiffs' rebuttal case?

02:45:01 5 MR. SHEASBY: It's going to be Professor
02:45:05 6 Madisetti, Professor Mahon, and then Ms. Sophia Vrzic, who
02:45:13 7 I understand Defendants have an objection to.

02:45:15 8 THE COURT: Is that true, Mr. Mueller?

02:45:17 9 MR. MUELLER: It is true, Your Honor.

02:45:18 10 THE COURT: All right. Well, I'm not aware of the
02:45:24 11 substance of that objection. Let's take a short recess,
02:45:29 12 and in about 10 minutes, lead and local counsel may meet me
02:45:32 13 in chambers, and we'll see what the problem is.

02:45:33 14 MR. MUELLER: Your Honor, may I say one more thing
02:45:35 15 before we leave? The slide that -- the Samsung license
02:45:37 16 with PanOptis, Your Honor, that did include one of the
02:45:39 17 patents-in-suit -- actually, originally two of the
02:45:41 18 patents-in-suit. So the reason why there was no -- no
02:45:44 19 notation on that slide is because it did, in fact, cover
02:45:46 20 one of the patents-in-suit.

02:45:48 21 I just say that for Your Honor's benefit as a bit
02:45:51 22 of an aside, but that was the reason.

02:45:55 23 THE COURT: My recollection was there were two
02:45:57 24 slides from this morning, and that's what I thought the
02:45:59 25 second slide was. But unless you feel strongly that that

02:46:03 1 needs to be corrected with the jury --

02:46:04 2 MR. MUELLER: No.

02:46:05 3 THE COURT: -- we'll just leave it where it is.

02:46:07 4 MR. MUELLER: That's right, Your Honor.

02:46:08 5 THE COURT: Anything further before we recess?

02:46:10 6 MR. SHEASBY: No, Your Honor.

02:46:11 7 THE COURT: All right. I'll see lead and local in
02:46:13 8 chambers in 10 minutes.

02:46:14 9 We stand in recess.

02:46:18 10 COURT SECURITY OFFICER: All rise.

02:51:32 11 (Recess.)

02:54:05 12 (Jury out.)

02:54:06 13 COURT SECURITY OFFICER: All rise.

02:54:07 14 THE COURT: Be seated, please.

03:16:22 15 Mr. Sheasby, is Plaintiff prepared to go forward
03:16:29 16 with its rebuttal case?

03:16:31 17 MR. SHEASBY: We are, Your Honor.

03:16:32 18 THE COURT: All right. Let's bring in the jury,
03:16:35 19 please.

03:16:35 20 COURT SECURITY OFFICER: All rise.

03:16:36 21 (Jury in.)

03:16:37 22 THE COURT: Please be seated.

03:17:05 23 All right. Ladies and gentlemen, as you heard,
03:17:11 24 the Defendants have closed their case-in-chief -- they have
03:17:14 25 rested their case-in-chief.

03:17:16 1 We'll now move to the final component of the
03:17:20 2 evidence, and that is the Plaintiffs' rebuttal case.

03:17:21 3 Mr. Sheasby, Plaintiffs should call their first
03:17:26 4 rebuttal witness at this time.

03:17:27 5 MR. SHEASBY: Your Honor, Plaintiffs call
03:17:31 6 Professor Vijay Madiseti.

03:17:32 7 THE COURT: All right. Professor Madiseti, if
03:17:34 8 you'll return to the witness stand. I remind you, sir, you
03:17:40 9 remain under oath.

03:17:41 10 THE WITNESS: Yes, Your Honor.

03:17:45 11 THE COURT: Mr. Pollinger, are you going to
03:17:45 12 examine this witness?

03:17:45 13 MR. POLLINGER: Yes, Your Honor.

03:17:45 14 THE COURT: All right. You may proceed when
03:17:49 15 you're ready.

03:17:49 16 MR. POLLINGER: Before I start, Your Honor, we're
03:17:51 17 going to very quickly get into confidential information of
03:17:54 18 third parties. I believe we should seal the court.

03:17:56 19 THE COURT: Then based on that request, I'll order
03:17:58 20 the courtroom sealed and direct those present not subject
03:18:00 21 to the protective order to excuse themselves until the
03:18:05 22 courtroom is reopened and unsealed.

03:18:05 23 (Courtroom sealed.)

03:18:05 24 (This portion of the transcript is sealed
03:18:05 25 and filed under separate cover as

03:18:10 1 Sealed Portion No. 18.)

03:18:10 2 (Courtroom unsealed.)

04:35:32 3 MR. MUELLER: Your Honor, may I set up a placard?

04:35:37 4 THE COURT: We're going to -- I'm going to send

04:35:40 5 the jury out before we start the redirect --

04:35:43 6 MR. MUELLER: Thank you.

04:35:43 7 THE COURT: I'm sorry, the cross.

04:35:45 8 All right. Ladies and gentlemen, I need to cover

04:35:47 9 a couple very small housekeeping matters with counsel. I

04:35:50 10 know it's late in the day. I don't expect to keep you here

04:35:55 11 a whole lot longer, but I do need you to step into the jury

04:36:00 12 room for a minute so I can cover this with them outside

04:36:00 13 your presence.

04:36:02 14 If you will, just leave your notebooks in your

04:36:03 15 chairs, follow all my instructions, including not to

04:36:06 16 discuss the case among yourselves, and we'll back in here

04:36:11 17 shortly.

04:36:11 18 The jury --

04:36:11 19 COURT SECURITY OFFICER: All rise.

04:36:12 20 THE COURT: The jury is excused to the jury room.

04:36:15 21 (Jury out.)

04:36:17 22 THE COURT: Mr. Sheasby, you have 15 minutes total
04:36:34 23 time remaining.

04:36:35 24 MR. SHEASBY: Thank you, Your Honor.

04:36:36 25 THE COURT: Mr. Mueller, you have four minutes --

04:36:40 1 MR. MUELLER: Thank you, Your Honor.

04:36:38 2 THE COURT: -- total time remaining.

04:36:40 3 All right. If you'll just remain standing, I'll
04:36:44 4 ask the courtroom deputy [sic] to bring the jury back in.

04:36:48 5 MR. MUELLER: And while that's happening,
04:36:50 6 Your Honor, may I set up this placard?

04:36:52 7 THE COURT: You may set up while they're coming
04:36:54 8 in, yes.

04:36:55 9 MR. MUELLER: Yes, Your Honor.

04:37:36 10 (Jury in.)

04:37:36 11 THE COURT: Thank you, ladies and gentlemen.
04:37:40 12 We'll proceed with cross-examination by the Defendant.

04:37:43 13 Mr. Mueller, you may proceed.

04:37:43 14 CROSS-EXAMINATION

04:37:46 15 BY MR. MUELLER:

04:37:46 16 Q. Good afternoon, Dr. Mahon.

04:37:49 17 A. Good afternoon.

04:37:50 18 Q. Dr. Mahon, Mr. Sheasby made a reference to Apple's paid
04:37:51 19 expert for the '284 patent. Do you recall that?

04:37:51 20 A. Yes, he did.

04:37:52 21 Q. Now, sir, you're a paid expert for the Plaintiffs in
04:37:55 22 this case, right?

04:37:56 23 A. Yes, I am.

04:37:56 24 Q. There's nothing wrong with that, right?

04:37:58 25 A. No, sir.

04:37:58 1 Q. Now, I only have three minutes left or four minutes
04:38:01 2 left, so if you could do your best to answer my questions
04:38:04 3 and I'll do my best to make them as clear as possible,
04:38:08 4 okay?

04:38:08 5 A. Sounds good.

04:38:09 6 Q. Now, sir, you agree with me that you don't infringe a
04:38:13 7 table in a patent, correct?

04:38:13 8 A. Correct.

04:38:15 9 Q. You infringe a claim --

04:38:17 10 MR. MUELLER: May I approach the placard, Your
04:38:19 11 Honor?

04:38:20 12 THE COURT: You may.

04:38:21 13 Q. (By Mr. Mueller) You infringe a claim, right, sir?

04:38:23 14 A. That is correct.

04:38:23 15 Q. This is the '284 patent, Claim 1. Do you see that,
04:38:27 16 sir?

04:38:27 17 A. I do.

04:38:27 18 Q. You made references with Mr. Sheasby to the LTE
04:38:30 19 standard table, right, sir?

04:38:32 20 A. I did, yes.

04:38:33 21 Q. You talked about places where values changed, right,
04:38:37 22 sir?

04:38:37 23 A. Yes, I did.

04:38:38 24 Q. The claim itself doesn't refer to changed values, does
04:38:43 25 it? The word "change" is in the -- nowhere in that claim?

04:38:46 1 A. The claim language does not include that word.

04:38:50 2 Q. Now, sir, you understand that Dr. Buehrer takes the
04:38:53 3 view that this right here is the second subset of values,
04:38:59 4 what I'm pointing to in the redundancy version column?

04:39:01 5 A. That's what he's pointing to.

04:39:03 6 Q. And he says the TBS index column to the left of it is
04:39:07 7 the first subset of values, right, sir?

04:39:09 8 A. Yes.

04:39:10 9 Q. And the claim requires that the first subset be bigger
04:39:14 10 than the second subset, right?

04:39:15 11 A. The claim limitation language says that the first
04:39:19 12 subset is more values than the second subset.

04:39:22 13 Q. This column contains 32 values, correct, sir?

04:39:25 14 A. Yes, it does.

04:39:25 15 Q. This contains 29, right, sir?

04:39:27 16 A. Yes, it does.

04:39:29 17 Q. What's bigger, 32 or 29?

04:39:30 18 A. The value 32 is bigger than the value of 29.

04:39:35 19 Q. Now, sir, there's been a lot of talk in this case about
04:39:38 20 essentiality, right?

04:39:39 21 A. Yes.

04:39:40 22 MR. MUELLER: Let's pull up Trial Transcript
04:39:43 23 Page 529 to 530.

04:39:44 24 Q. (By Mr. Mueller) And this is Mr. Rodermund.

04:39:47 25 You saw his testimony to the jury, by deposition?

04:39:50 1 A. I did.

04:39:51 2 Q. Now, did you see at the end where it says: So a
04:39:55 3 device -- certain device definitely does not have to
04:39:58 4 implement all essential patents which are in the LTE
04:40:02 5 standard?

04:40:03 6 Do you see that, sir?

04:40:04 7 A. I do see that.

04:40:05 8 Q. And the way to know whether a particular product is
04:40:08 9 using a particular patent is we compare the patent to the
04:40:12 10 product, right, sir?

04:40:13 11 A. Yes. I did that.

04:40:16 12 Q. And in this case, that requires looking at the Intel
04:40:19 13 and Qualcomm chips in the Apple products, right, sir?

04:40:23 14 A. That's exactly what I did, yes.

04:40:26 15 Q. And we can agree that Ms. Dwyer didn't do that, did
04:40:30 16 she, sir?

04:40:30 17 A. Ms. Dwyer analyzed the claim elements.

04:40:32 18 Q. Ms. Dwyer never looked at a single Intel chip or a
04:40:37 19 single Qualcomm chip, correct?

04:40:38 20 A. Not that I know of.

04:40:40 21 Q. Now, sir, let's talk about the '774 patent. That
04:40:44 22 requires receiving a processing parameter from a base
04:40:47 23 station, right?

04:40:47 24 A. Yes, it does.

04:40:48 25 Q. Now, Dr. Wells took the stand this morning and he said

04:40:50 1 that what happens in the Apple products is the products
04:40:54 2 themselves create a processing parameter through a
04:40:57 3 five-step process. Do you recall that, sir?

04:40:58 4 A. He does claim that, yes.

04:41:00 5 Q. Now, does receiving mean the same thing as
04:41:04 6 constructing?

04:41:05 7 A. Does receiving mean the same thing as constructing?

04:41:09 8 No.

04:41:13 9 Q. Now, in this case, Apple has called Mr. Tony Blevins to
04:41:16 10 the stand, correct?

04:41:16 11 A. Yes, they have.

04:41:17 12 Q. He's an engineer by training, right?

04:41:20 13 A. That's what I understand, yes.

04:41:21 14 Q. And we also called two chip engineers who work on the
04:41:25 15 actual chips and code at issue in this case, correct?

04:41:28 16 A. Yes, you did.

04:41:28 17 Q. The Plaintiffs called one fact witness, Mr. Brian
04:41:31 18 Blasius, who hadn't even read the patents in full, right,
04:41:34 19 sir?

04:41:34 20 A. We called one fact witness.

04:41:36 21 Q. And, sir, you never spoke to a single inventor
04:41:39 22 yourself, did you?

04:41:39 23 A. I -- not that I know of, no.

04:41:42 24 Q. Thank you, sir. No further questions.

04:41:46 25 THE COURT: Do you have redirect, Mr. Sheasby?

04:41:48 1 MR. SHEASBY: Just briefly, Your Honor.

04:41:50 2 THE COURT: Do you need to use this demonstrative?

04:41:53 3 MR. SHEASBY: I would like it up, Your Honor, with
04:41:55 4 your permission.

04:41:56 5 THE COURT: That's fine.

04:41:56 6 REDIRECT EXAMINATION

04:41:57 7 BY MR. SHEASBY:

04:41:57 8 Q. So let's turn to the '283 (sic) patent.

04:41:59 9 MR. SHEASBY: And, Mr. Huynh, can I have the --
04:42:02 10 the -- the rebuttal slides from Dr. Mahon, and if I could
04:42:07 11 have -- I think it's the second to the last slide. I
04:42:22 12 believe it's PDX -- keep -- keep going.

04:42:32 13 Keep going.

04:42:35 14 Actually, I believe it's -- 36 is the number,
04:42:40 15 Mr. Huynh. Oh, keep going.

04:42:42 16 Stop right there. Perfect.

04:42:44 17 Q. (By Mr. Sheasby) Counsel for Apple just said tables
04:42:50 18 don't infringe patents, fair?

04:42:52 19 A. Fair.

04:42:53 20 Q. This is the source code, on the left-hand side, from
04:42:57 21 Apple's design, fair?

04:42:59 22 A. Fair.

REDACTED BY ORDER OF THE COURT

04:43:02 23 Q. [REDACTED]

04:43:07 24 [REDACTED]

04:43:11 25 [REDACTED]

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[REDACTED]

MR. MUELLER: Your Honor, I think we're going to -- if we're going to get back into the code, we're going to have to seal the courtroom. This is Qualcomm information.

THE COURT: All right. Then I'll order the courtroom sealed at this time and direct all of those present not subject to the protective order to excuse themselves.

(Courtroom sealed.)

(This portion of the transcript is sealed.
and filed under separate cover as
Sealed Portion No. 19.)

(Courtroom unsealed.)

THE COURT: Ladies and gentlemen of the jury, you have now heard all the evidence in this case. And it is 10 minutes until 5:00 p.m. on a Friday.

I have good news for you. First of all, I'm about to let you go home. I have even better news for you. You are not going to have to be back by 8:30 Monday morning. There are things I must take up with counsel outside of your presence as required by the law and the rules of procedure, and those things can't be covered by me between

04:50:22 1 now and Monday morning with you being ready to go at 8:30.
04:50:27 2 So I'm going to need some time with the parties and the
04:50:31 3 lawyers Monday morning.

04:50:32 4 I'm going to ask you be in the jury room assembled
04:50:36 5 and ready to go by 10:30 Monday morning. No objections, I
04:50:41 6 gather?

04:50:42 7 Now, I want you to understand this is not a
04:50:47 8 science, it's an art. And I can't know with certainty how
04:50:50 9 long it's going to take for me to cover these things that I
04:50:53 10 will not go into with you right now.

04:50:55 11 That means I might be through before 10:30 and
04:51:00 12 waiting on you, and it means I might not be through by
04:51:05 13 10:30 and you be waiting on me. We're just going to have
04:51:07 14 to, as my father used to say, play it by ear. But you do
04:51:11 15 not have to be here at 8:30 Monday morning. I'd like you
04:51:15 16 assembled and ready to go by 10:30.

04:51:17 17 And then we will proceed at that point as soon as
04:51:20 18 I'm finished with these matters I have to take up with
04:51:23 19 counsel and the parties outside of your presence.

04:51:26 20 I'm going to ask you to take your notebooks and
04:51:31 21 leave them on the table in the jury room. I'm going to
04:51:33 22 remind you, we are getting close to the end of this
04:51:38 23 process. It would be a travesty if you were to violate any
04:51:42 24 of my instructions and jeopardize this entire process.

04:51:44 25 So please, do not discuss this case with anyone,

04:51:44 1 do not communicate about it with anyone, do not discuss it
04:51:48 2 among yourselves, do not attempt to do any research of any
04:51:52 3 kind, and follow all the other instructions I've given you
04:51:56 4 about your conduct throughout the trial.

04:51:57 5 Please travel safely. I hear some thunder
04:52:01 6 outside, and I will see you Monday morning at 10:30.

04:52:05 7 The jury is excused.

04:52:06 8 COURT SECURITY OFFICER: All rise.

04:52:07 9 (Jury out.)

04:52:20 10 THE COURT: Please be seated.

04:52:23 11 Mr. Sheasby, you left 11 minutes on the table, and
04:52:32 12 Mr. Mueller, you left 11 seconds on the table.

04:52:35 13 It's my practice, as I told you during pre-trial,
04:52:41 14 to take up matters under Rule 50(a) after all the evidence
04:52:48 15 has been presented, which is where we are now.

04:52:51 16 Here's what I intend to do with regard to motions
04:52:54 17 under Rule 50(a). You may prepare a written version of any
04:52:58 18 motion under Rule 50(a) that you think is appropriate,
04:53:02 19 Plaintiff and Defendant, and file it on the docket not
04:53:05 20 later than noon on Sunday.

04:53:08 21 I will review them Sunday afternoon, and I will
04:53:11 22 hear very, very brief argument Monday morning and rule on
04:53:13 23 your motions under Rule 50(a). But I will have the full
04:53:17 24 benefit of your written filings from Sunday afternoon
04:53:20 25 forward. That should save us time Monday morning.

04:53:23 1 After I've completed the very brief argument and
04:53:26 2 the ruling on the motions, then we'll proceed to conduct an
04:53:30 3 informal charge conference in chambers. I have your latest
04:53:35 4 submitted, jointly-suggested charge form. I will be going
04:53:41 5 over that, as well. We'll discuss that and the verdict in
04:53:43 6 this case after I've ruled on matters urged under Rule
04:53:50 7 50(a).

04:53:50 8 After that, I will make any adjustments I think
04:53:56 9 are appropriate, and generate a printed copy of the final
04:53:59 10 charge and verdict form. I will give you an opportunity to
04:54:02 11 review it, and then I will conduct a formal charge
04:54:04 12 conference on the record where either side can lodge any
04:54:07 13 objections they think necessary and appropriate to what I
04:54:12 14 have given you as the final version of those documents.

04:54:15 15 After the final charge -- or, excuse me, the
04:54:19 16 formal charge conference, I'll at that time be prepared to
04:54:24 17 bring in the jury, give them my final instructions, and
04:54:27 18 allow counsel to present their closing arguments.

04:54:31 19 Are there questions from anybody?

04:54:33 20 MR. SHEASBY: Your Honor, I want to instantiate an
04:54:39 21 agreement that Mr. Mueller and I believe had, on the
04:54:42 22 record.

04:54:42 23 We're going to exchange, not just our
04:54:44 24 demonstratives, but any trial transcript call-outs in
04:54:47 25 advance of -- on Sunday to ensure that all disputes are

04:54:51 1 taken up with the Court before --

04:54:58 2 THE COURT: Well, as we discussed in chambers,
04:55:00 3 Mr. Sheasby, you and Mr. Mueller and I and other counsel in
04:55:03 4 the case, my direction is that you exchange everything
04:55:06 5 possible so if there is any possibility you have a dispute,
04:55:10 6 I can know about it and resolve it before you start your
04:55:12 7 closing arguments.

04:55:13 8 I consider the closing arguments before a jury
04:55:15 9 after a lengthy jury trial like this to be the most serious
04:55:19 10 and solemn part of the proceeding, and the proceeding
04:55:22 11 itself is inherently solemn and serious. So the last thing
04:55:27 12 I want are objections raised in the middle of a closing
04:55:30 13 argument from the opposing counsel.

04:55:31 14 If you have any issues after you've made that
04:55:35 15 fulsome disclosure to each other, I'll take those up Monday
04:55:39 16 before we start with the final jury instructions, all
04:55:41 17 right?

04:55:41 18 MR. SHEASBY: Thank you, Your Honor.

04:55:42 19 THE COURT: Any other questions?

04:55:43 20 MR. MUELLER: Just one, Your Honor. After the
04:55:46 21 Rule 50 arguments on Monday morning, may I go finish
04:55:51 22 preparations for the closing argument, and my colleagues,
04:55:56 23 Mr. Selwyn and Ms. Amadi, will participate in the charge
04:56:02 24 conference?

04:56:02 25 THE COURT: Mr. Mueller, if you would like to have

04:56:02 1 an associate on your trial team present the argument on the
04:56:02 2 motions under Rule 50(a) and attend the informal charge
04:56:06 3 conference while you prepare for closing arguments, you're
04:56:08 4 free to do that.

04:56:09 5 MR. MUELLER: Thank you, Your Honor.

04:56:09 6 THE COURT: The same goes for you, Mr. Sheasby.

04:56:12 7 MR. SHEASBY: Thank you, Your Honor.

04:56:13 8 THE COURT: As long as it's adequately staffed,
04:56:15 9 lead counsel doesn't have to be present at either the 50(a)
04:56:18 10 motions or the informal charge conference, as I know you'll
04:56:23 11 be preparing for those closing arguments.

04:56:25 12 MR. SHEASBY: Thank you, Your Honor.

04:56:26 13 MR. MUELLER: Thank you, Your Honor.

04:56:26 14 THE COURT: Mr. Baxter.

04:56:28 15 MR. BAXTER: What time Monday, Your Honor?

04:56:32 16 THE COURT: You need to be here and ready to go by
04:56:34 17 regular time. If there are any disputes that developed
04:56:37 18 with regard to your closings, I need them by 7:00 o'clock,
04:56:43 19 and I'll meet with you at 7:30, and we're going to get on
04:56:47 20 the record early because we will -- we will have to work
04:56:50 21 hard to be ready to go on all of this by midmorning, and I
04:56:54 22 don't want the jury waiting on us any longer than
04:56:56 23 necessary.

04:56:56 24 MR. SHEASBY: Your Honor, with your permission,
04:56:59 25 may I ask Mr. Mueller one question, because I think it will

04:57:02 1 inform the process on Monday?

04:57:06 2 THE COURT: Let's go off the record.

04:57:08 3 (Off-the-record discussion.)

04:57:09 4 THE COURT: All right. We're back on the record.

04:57:18 5 Anything further before we recess until Monday

04:57:20 6 morning?

04:57:20 7 MR. SHEASBY: Nothing from Plaintiffs, Your Honor.

04:57:23 8 MR. BAXTER: And I take it Monday morning, we

04:57:25 9 probably need to put in the last of the exhibits,

04:57:28 10 Your Honor?

04:57:28 11 THE COURT: Yes, sir. We'll do that before I

04:57:30 12 bring in the jury.

04:57:30 13 MR. BAXTER: Thank you.

04:57:31 14 THE COURT: And you need to go over that with each

04:57:33 15 other and make sure that both sides are straight on that.

04:57:35 16 MR. SHEASBY: Thank you, Your Honor.

04:57:36 17 THE COURT: All right. Without anything further,

04:57:38 18 we stand in recess until Monday morning.

04:57:41 19 MR. MUELLER: Thank you, Your Honor.

04:57:42 20 COURT SECURITY OFFICER: All rise.

04:57:46 21 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

8/7/2020
Date